BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

TO: The Federal-State Joint Board on Universal Service

REPLY COMMENTS OF THE
WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION,
MONTANA TELECOMMUNICATIONS ASSOCIATION,
COLORADO TELECOMMUNICATIONS ASSOCIATION
AND MONROE TELEPHONE COMPANY

The Washington Independent Telephone Association (WITA), Montana Telecommunications Association (MTA), the Colorado Telecommunications Association (CTA), and Monroe Telephone Company hereby submit reply comments concerning the four proposals advanced by certain members and staff of the Federal-State Joint Board on Universal Service (Joint Board).[1] These Reply Comments are filed pursuant to the Federal Communication Commission's Public Notice, FCC 05J-1, released August 17, 2005 (Public Notice).

[1] The four plans are the State Allocation Mechanism or "SAM" proposed by Joint Board Member Ray Baum, the Three Stage Package for Universal Service Reform ("TSP") proposed by Joint Board Member Billy Jack Gregg, the Holistically Integrated Package or "HIP" proposed by Commissioner Robert Nelson, and the Universal Service Endpoint Reform Plan or "USERP" proposed by Joel Shifman, Peter Bluhm and Jeff Pursley.

I. SUMMARY

There is substantial opposition to each of the four proposals as set forth for comment. Opposition comes from interexchange carriers, wireline local carriers, wireless carriers, and state regulators. The Opening Comments filed in this proceeding point out that each of the four proposals raises multiple problems:

- none of the proposals provides sufficient detail to fully evaluate the proposal;
- each of the proposals raises substantial legal issues over sub-delegation;
- each of the proposals raises questions as to whether the proposal meets the predicate in Section 254 of providing support which is sufficient and predictable;
- each of the proposals raises substantial concerns about the cost of administration for such a program; and
- each of the proposals raises concerns about whether such a drastic overhaul of current mechanisms is premature.

At a time when everyone's resources are stretched extraordinarily thin, the focus should be on steps that can be taken to produce immediate beneficial results. The focus should not be on a wholesale overhaul of universal service mechanism when the landscape in which the universal service program will operate is not known. By this, it is meant that until intercarrier compensation reform is completed, trying to predict how the federal universal service mechanism will need to be adjusted is like betting the life savings on a spin of the roulette wheel. You might be right and walk off in great position. However, more likely the odds say that you will be wrong. Wrong and broke is not where the federal universal service fund should end up.

It will be a much more productive use of resources to focus on issues that can be addressed, and should be addressed, in advance of intercarrier compensation reform and any major adjustment of the federal universal service fund. One of these issues is to address phantom traffic. Another issue is to broaden the contribution base. A third area of focus can and should be competitive ETC designation issues: (1) elimination of the "same support" rule; (2) reviewing the use of wireless billing addresses; (3) competitive eligible telecommunications carrier (CETC) accountability; and (4) the CETC designation process.

II. BACKGROUND

WITA and MTA filed joint Opening Comments concerning the four proposals. They were joined by Monroe Telephone Company, serving a rural area of Oregon. WITA, MTA and Monroe Telephone Company are joined by CTA in these Reply Comments.

The members of WITA, MTA and CTA consist of rural telephone companies, as that term is defined by the Telecommunications Act of 1996.[2] These rural telephone companies serve geographically diverse areas, from the foothills of the Cascade and Rocky Mountains to arid plains. They serve areas that are sparsely populated, although most contain a core density, such as a town or small city, with very sparsely populated farming or timber land surrounding the community.

With the help of support from the existing federal universal service fund, these rural telephone companies have been successful in providing high-quality telecommunications service to the rural portions of their state. The vast majority of these companies have been able to deploy networks that allow a significant portion of their customers access to broadband data services. This should be a success story that is celebrated. It should not be a situation that results in the dismantling of the existing federal universal service program that aided the progress made to date. A concrete, factual basis for major change to the federal universal service fund must be found before changes are made. This is not to say some changes should not be made. However, a case has yet to be developed for the radical changes sought in the four proposals.

[2] 47 U.S.C. 153(37).

III. SUBSTANTIVE COMMENTS CONCERNING THE FOUR PROPOSALS TO REFORM HIGH-COST SUPPORT

Each of the four proposals is based upon a logical proposition. That proposition is that the state commissions are closer to the field of action, as it were, and are therefore in a better position to determine what is needed to fulfill the mandates of providing universal service in its particular state. The problem is that even if there is logic behind this proposition, there has been no case made that at this point in time the current system needs to be demolished and replaced with a radically different universal service program. To put it succinctly, each of the four proposals also contains the same flawed premise: that the existing universal service mechanism is so defective that it must be radically overhauled. That premise is not demonstrated by empirical fact. Rather, that flawed premise seems to be a stalking horse for the issue that is really being addressed: the growth in the size of the fund.

If the real issue is the growth in the size of the fund, then the reason for that growth must be carefully analyzed. As pointed out by OPASTCO, the recent rapid growth has been caused by increases in CETC support.[3] However, each of the four proposals seem to be aimed at finding ways of reducing support for incumbent ETCs, the rural telephone companies.

As pointed out by the United States Telecom Association (USTA), the current mechanism works well. USTA asserts that the problem is with the contribution methodology.[4] (That is, the contribution base needs to be expanded to all users of the public switched telecommunications network.) This position is echoed by the OPASTCO Comments.[5] If the contribution mechanism is addressed and support broadened, there is less political pressure concerning the growth in the size of the fund. The cause of the growth and accountability for use

[3] OPASTCO Comments at p. 15-16. See, also, Comments of Balhoff & Rowe, LLC at p. 16-24.
[4] USTA Comments at p. 2 and 3.
[5] OPASTCO Comments at p. 2.

of funds are still important issues to address. However, there is no basis to move to a radical new approach.

1. Each of the Four Proposals Has Met with Overwhelming Criticism.

The opposition to each of the four proposals, in particular, to the state block grant aspect of the four proposals, is substantial and well-founded. The opposition comes from all corners of the industry: interexchange carriers;[6] wireless carriers;[7] wireline carriers, both big and small;[8] and state regulators.[9]

It is telling that the four proposals are criticized by state regulators. For example, the Iowa Utility Board expressed concerns about the transactional costs, the increase in regulation and the financial burdens placed on small rural companies raised by the four plans. The Iowa Board points out that none of the four plans has adequate detail to allow evaluation of those plans.[10] The Alaska Public Utility Commission criticizes the plans' use of block grants, pointing out that universal service is a national goal, not a state goal.[11] It is also telling that each of the plans is criticized by the National Association of State Utility Consumer Advocates (NASUCA) as not having enough detail to evaluate.[12] Specific criticisms are made by NASUCA concerning combining rural and non-rural funds.[13] NASUCA is also concerned about whether block grant programs can provide a predictable support mechanism.[14] NASUCA also criticizes the HIP

[6] Comments of AT&T Corp. on Proposals to Modify High-Cost Support Rules (AT&T Comments).
[7] Comments of CTIA – The Wireless Association™ on Joint Board High Cost Proposals (CTIA Comments).
[8] See, e.g., Bell South Comments; Comments of the United States Telecom Association (USTA Comments); and Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO Comments), among others.
[9] Comments of the Iowa Utility Board; Comments of the Regulatory Commission of Alaska.
[10] Iowa Utility Board Comments at p. 3-5.
[11] Comments of the Alaska Regulatory Commission at p. 6-7.
[12] NASUCA Comments at p. 3-4.
[13] NASUCA Comments at p. 20.
[14] NASUCA Comments at p. 27-29.

program's use of statewide averages as unreasonably masking differences among carriers.[15] NASUCA criticizes the USERP proposal as lacking technological neutrality.

It is even more to the point that the proponents of the four plans criticize one another. The Oregon Public Utility Commission, as the home state for Commissioner Baum, supports Commissioner Baum's SAM mechanism, but criticizes the other programs: specifically, the HIP use of a national benchmark; the TSP proposal as containing too many steps and too difficult to administer; and the USERP proposal as not technologically neutral, among several other problems.[16] On the other hand, comments from the Maine and Vermont commissions, which are the "home" of the USERP proposal, criticize the SAM proposal as failing to address sufficiency in a way which "renders plan fundamentally incomplete."[17]

There is no basis for moving to a "fundamentally incomplete" plan. There is no basis for moving to any proposal which lacks sufficient detail for evaluation. There is no basis at this time for an extensive demolition and reconstruction of the existing federal universal fund.

2. <u>Massive Restructuring of the Federal USF Mechanism is Premature</u>.

It has been appropriately observed that the efforts fundamentally to restructure the current USF mechanism are premature. While the FCC is engaged in the work of intercarrier compensation reform, it is premature to restructure a mechanism that may again need revision once the intercarrier compensation reform issues are resolved. On this subject, AT&T comments about the need first to address intercarrier compensation reform.[18] Similar sentiments were expressed by USTA.[19] These points are important ones. A fundamental restructuring of federal

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[15] NASUCA Comments at p. 11.
[16] Comments of the Oregon Public Utility Commission beginning at p. 13.
[17] Comments on the Public Notice by the Maine Public Utility Commission and the Vermont Public Service Board (Maine/Vermont Comments) at p. 4.
[18] AT&T Comments at p. 2.
[19] USTA Comments at p. 11.

high-cost support prior to intercarrier compensation reform is putting the cart before the horse. Ideally, intercarrier compensation reform and universal service support reform go hand-in-hand. However, substantial modification of existing universal service support mechanisms should not precede intercarrier compensation reform.

3. It is Premature to Consider the Four Proposals Because They Lack Sufficient Detail to Allow Full Evaluation.

Other comments demonstrate that consideration of any of the four mechanisms is premature simply because of the lack of detail concerning the mechanisms themselves. Even those entities that suggested that one or more of the proposals deserved further consideration pointed out that the lack of detail prevented full evaluation at the present time.[20]

Many of the comments point out the lack of ability to evaluate the four proposals because of the lack of detail. As AT&T states, "Consideration of block-grant programs, however, is premature."[21] AT&T goes on to point out that there is insufficient detail to assess the plans and that, of course, "The devil is in the details."[22] The Iowa Utilities Board also points out the lack of detail.[23] The National Association of State Utility Consumer Advocates (NASUCA) emphasizes that there is not enough detail to sufficiently evaluate the plans.[24] Several others make the same point.[25] Without the necessary detail, it is too early to give serious consideration to any of the four proposals.

[20] See, e.g., Comments of Verizon at p. 11.
[21] AT&T Comments at p. 2.
[22] AT&T Comments at p. 6.
[23] Comments of Iowa Utilities Board at p. 4.
[24] Comments of the National Association of State Utility Consumer Advocates on Joint Board High-Cost Support Proposals (NASUCA Comments) at p. 3-4.
[25] See, e.g., Comments of the Rural Independent Competitive Alliance at p. 5.

4. The Administrative Costs of the Four Proposals are Unknown, But Are Certain to be Very High.

There is substantial criticism contained in the Opening Comments concerning the administrative costs that would be imposed by the four proposals. For example, Bell South points out that if there are potentially 51 different systems, there are substantial administrative costs not just for the carriers that operate in more than one state, but also for the FCC and the Universal Service Administrative Company (USAC).[26] Many of the other comments point out the administrative burdens potentially imposed by the four plans.[27] Comments in the same vain are also filed by wireless companies through CTIA.[28]

TDS succinctly summarizes the administrative costs associated with the four proposals use of the state block grant.[29] As stated by TDS:

> On the practical side, the administrative costs of implementing a block grant program would be considerable. This approach would create new layers of administrative complexity both for USAC and for rural companies who operate in multiple states and study areas. Instead of one uniform regime, the Joint Board proposals would create fifty separate regimes whose allocation criteria, practices, and regulations could vary significantly from state to state. For USAC, which would continue to distribute support to carriers under the proposals, this would necessitate the development of new systems and procedures for monitoring and collecting information about state allocation determination, for determining and distributing support to carriers (including those operating in multiple states), and for calculating projected contribution needs. USAC would also need to modify the audit process for rural telephone companies to take into account variations in state rules and requirements. The added complexity of these new procedures would inevitably increase USAC's administrative costs, threatening to undermine the well-established efficiency of the company. (Footnotes omitted.)[30]

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[26] Bell South Comments at p. 4-5.
[27] See, e.g., National Telecommunications Cooperative Association Initial Comments (NTCA Comments) at p. 9.
[28] CTIA Comments at p. 17. See, also, Comments of the Western Telecommunications Alliance and Independent Telephone and Telecommunications Alliance (WTA Comments) at p. 16; Comments of TDS Telecommunications Corp. on Proposals to Modify Rules Relating to High-Cost Universal Service Support (TDS Comments) beginning at p. 6; OPASTCO Comments at p. 7-8.
[29] There are additional costs imposed by various aspects of each of the programs, such as the extent to which forward-looking cost studies might need to be prepared, which are not prepared today.
[30] TDS Comments at p. 7-8.

TDS goes on to describe the additional costs that would be imposed on rural telephone companies serving multiple states. There are other administrative costs associated with other aspects of the plans: the cost of forward-looking cost studies; each state's analysis of need, etc. All of these costs are substantial. The Iowa Utilities Board recognizes the substantial additional costs these four proposals would create. In their Comments, the Iowa Utilities Board expresses concern about the transactional costs of the four proposals, the increase in regulation they bring and the financial burdens that would be placed on small rural telephone companies.[31] These additional costs are a serious concern. Improving additional costs on small rural companies takes away from these companies' ability to meet the needs to rural customers.

5. Block Grant Programs Present Substantial Legal Questions of Sub-Delegation.

The issue of whether a block grant program can withstand legal scrutiny is raised by many of the comments. For example, the Minnesota Independent Coalition (MIC) argues that there is no ability to sub-delegate Section 254 responsibilities. MIC argues that Congress gave the job to the FCC and did not put language in the Act that allows for sub-delegation, such as the language that exists for Section 252 arbitrations, for example.[32] Similar concerns were expressed by NTCA,[33] the WTA[34] and OPASTCO,[35] among others.

Without repeating the legal analysis that is contained in many of the Opening Comments, the concept that universal service is a national goal to be administered at the national level is summarized succinctly by the Regulatory Commission of Alaska:

> Universal service is a national goal by which all consumers benefit regardless of the state where they reside. Customers in Florida benefit by the ability to call customers in Alaska and vice versa. As customers nationwide benefit by universal service, regardless of what

[31] Comments of Iowa Utilities Board at p. 3-5.
[32] Comments of MIC at p. 2-3.
[33] NTCA Comments at p. 7.
[34] Western Alliance Comments at p. 5.
[35] Comments of OPASTCO at p. 8.

> state they live in, it is unreasonable to place an artificial boundary (i.e., the state geographic area) as the dividing line between state and federal universal service responsibilities.[36]

This is a national program that Congress intended to be administered at the national level.

6. <u>A State Block Grant Program Does Not Produce Results Which Are Sufficient Or Predictable</u>.

There is a substantial question about whether a state block grant program can meet the requirements of Section 254 that support be sufficient and predictable. If a block grant program results in widely varying amounts flowing to a carrier on a year-by-year basis, that will not be predictable support. It will, in fact, hamper investment in infrastructure. Even plans that call for smoothing out support for a period of five years do not meet the test of sufficiency and predictability. Telecommunications infrastructure is long-lived plant. Recovery of investment is often stretched out over long periods of time by regulatory decisions as to appropriate depreciation lives that can be recovered in rates. Companies cannot be told on one hand that they can only recover fiber optic plant over a twenty year period of time, yet get support for that plant over one, three or five years.

It has been pointed out that block grant programs will, in fact, harm universal service goals by stifling investment.[37] As stated by MIC in its Opening Comments:

> A nationwide plan is needed for *predictability*, both for carriers doing business in multiple States and for carriers doing business in only one State. For carriers doing business in multiple States, the risk of inconsistent decisions will be applied to very substantial revenue sources. That risk would severely curtail investments since the carriers would know that a change in the administration of a State commission could significantly alter the availability of support needed to fund long term investments.
>
> Carriers doing business in only one State will experience the same type of uncertainty, even if they do not risk inconsistency between different jurisdictions. Predictability and reasonable certainty are essential to promote long-run investing in the rural, high cost areas served by ROR ILECs. The required level of predictability and certainty can result

[36] Comments of the Alaska Regulatory Commission at p. 7.
[37] FairPoint Communications Comments at p. 2; MIC Comments at p. 6; Comments of Western Alliance at p. 13.

> only from a nationwide plan with definitive criteria, standards, and mechanisms for application.[38]

The Comments of TCA, Inc. -- Telecom Consulting Associates -- echo these concerns and point out that the Kansas Corporation Commission has expressed concerns about block grant interpretations and state-by-state implementation of universal service programs.[39] Even NASUCA questions whether any of the four proposals can provide support which meets the predictability test.[40]

7. Support Mechanisms for Rural Telephone Companies Should Continue to be Based on Embedded Costs.

The use of embedded costs is the only mechanism currently available to ensure that support is sufficient and predictable, but not excessive. As stated by TDS:

> The embedded cost mechanism accurately reflects the real-world costs of serving customers in rural areas with immense variations in geographic, economic, and regulatory conditions. Because it necessarily captures every factor affecting each carrier's cost, it is a highly effective means to ensure that rural telephone companies recover adequate support. The embedded cost mechanism also ensures that any network and corporate operating efficiencies are passed through to the Fund. Finally, the certainty provided by the embedded cost mechanism gives rural telephone companies the incentives they need to make the necessary investments in network infrastructure to deploy advanced telecommunications services to rural consumers.[41]

Bell South points out that while there may be theoretical reasons for looking at forward-looking economic costs to determine a carrier's level of universal service support, "Unless and until the Commission can demonstrate that use of forward-looking costs to calculate high-cost support for rural carriers will provide 'specific, predictable and sufficient' support for such carriers, the Commission should continue to use an embedded cost methodology to calculate support for

[38] MIC Comments at p. 8.
[39] Comments of TCA, Inc.-Telecom Consulting Associates at p. 3-4.
[40] NASUCA Comments at p. 29.
[41] TDS Comments at p. 13-14.

these carriers."[42] Bell South concludes that there is no evidence in the record to support adoption of a forward-looking cost methodology for rural carriers and correctly points out that "Unless and until the Commission is able to develop a forward-looking cost model that can account for the legitimate cost differences among rural carriers and is free of the shortcomings of the existing model for non-rural carriers, it should continue to use embedded cost to calculate high-cost support for rural carriers."[43]

The problems with the existing forward-looking cost methodologies were well documented by the Rural Task Force.[44] There is no basis in this record to contradict the findings of the Rural Task Force.

8. Proposals to Freeze Per-Line Support are Ill Founded.

It has been noted that the four proposals put forth for comment seem to be primarily concerned about the growth in the size of the high-cost fund. However, the proposals also appear to go about addressing the growth in the size of the fund by targeting incumbent ETCs for reduction in support, without recognizing that recent growth is caused by the growth in support for CETCs, not incumbent ETCs. An example of this misdirected focus is the proposal to freeze rural ILECs' per-line support upon competitive entry. The stated reason for this recommendation is to stabilize the size of the fund.[45] OPASTCO correctly points out that this notion fails to consider that it is the rural networks, not individual lines, that enable rural companies to provide services supported by the high-cost program.[46] As stated by OPASTCO:

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[42] Bell South Comments at p. 6.
[43] Bell South Comments at p. 8.
[44] Rural Task Force, White Paper 3, Alternative Mechanisms for Sizing a Universal Service Fund for Rural Telephone Companies (August, 2000) at p. 21-29. See, also, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (Released Sept. 29, 2000) at p. 15-20.
[45] Public Notice, Appendix B at p. 10.
[46] OPASTCO Comments at p. 5.

> Major components of rural ILECs' network costs are fixed and do not correspondingly disappear when a customer discontinues service to a line. If rural ILECs were uncertain as to whether they will continue to receive support that is sufficient to achieve full recovery of their network costs, they would be reluctant to continue investing in infrastructure, particularly the multi-functional infrastructure capable of providing advanced services. Furthermore, support is not "predictable" if a change in the method of calculation is triggered by an external event (competitive entry), the timing of which cannot be predicted by the ILEC.[47]

As pointed out by TDS: "Because freezing per-line support would de-link the amount of USF funding that rural telephone companies recover from the costs they incur in providing service, implementing this proposal would drastically reduce rural investment incentives for carriers who serve areas in which one or more CETC has been designated."[48]

What many of the Comments point out, as will be discussed later, is that the way to address the per-line support issue is to move to a system where each ETC's support is premised upon its own costs. This is the type of proactive and productive modification to the existing USF program that the Joint Board can undertake in a meaningful way prior to intercarrier compensation reform. Instead of trying to arbitrarily cut rural company support, scrutiny should be focused on the CETC designation process and the extraordinary increase in CETC support.

[47] OPASTCO Comments at p. 5-6.
[48] TDS Comments at p. 10.

IV. ACTIONS THAT THE JOINT BOARD SHOULD RECOMMEND

One of the themes of these Reply Comments is that the existing high-cost mechanism is not so terribly broke that it needs immediate dismantling and reconstruction. That does not mean that there are no steps that the Joint Board can take prior to intercarrier compensation reform. In this section of these Reply Comments, the areas where action can be taken in a substantive way are discussed.

1. The Joint Board Should Recommend That the FCC Undertake an Immediate Review of Phantom Traffic Issues.

A significant volume of telecommunications traffic is being delivered to rural companies for termination without sufficient information to permit billing by the rural companies. This traffic originates from interexchange carriers (IXCs), competitive local exchange carriers (CLECs), wireless providers and others (collectively, "the originating providers"). The rural companies are not being paid for terminating this traffic. As a corollary, the originating providers are receiving free use of the rural companies' networks. In addition, it appears that significant amounts of toll or long-distance traffic is being delivered to the rural companies over extended area service (EAS) trunks without records necessary for assessing access charges. This traffic – traffic delivered without associated records identifying the originating carrier, or interexchange carrier in the case of toll traffic – is referred to as "Phantom Traffic."

National estimates have put the size of the problem at twenty percent or more of the traffic terminating to a rural carrier.[49] In Oregon, one company that has established the capability to capture terminating traffic has reported that upwards of fifty percent of the traffic

[49] National Exchange Carrier Association, Inc., "Phantom Traffic" Uncover, Discover and Recover, Presented March 3, 2005. Balhoff & Rowe, LLC, Phantom Traffic: Problem and Solutions, (May, 2005).

terminating to it on Feature Group C (FGC) trunks[50] potentially qualifies as Phantom Traffic. The same company reported that on Feature Group D (FGD) trunks, the Phantom Traffic rate is far below one percent. Two Washington companies with similar measuring capability have reported that in excess of forty percent of the traffic received by one company and in excess of fifty percent of the traffic received by the other company, terminating to the companies on FGC trunks do not have associated billing records and, thus, may qualify as Phantom Traffic.

Set out below as Chart 1 and Chart 2 are the trending results for the past several years in the growth of phantom traffic delivered to the two Washington companies mentioned above. What these charts demonstrate is that the problem of Phantom Traffic is a growing problem and is substantial. Not only is it possible that large amounts of access traffic are escaping responsibility for payment for use of the rural company networks, the rural companies are also experiencing significant increased costs for enhancing the trunk groups. These expenses are borne by the rural customers instead of by the carriers that are enjoying the free use of the rural companies' networks. In addition, to the extent this traffic appears as "local" traffic, the originating carrier may be avoiding making its full contribution to the universal service fund.

[50] In common usage, the trunk groups between rural companies and the RBOC tandem for the carriage of toll traffic, at least in Qwest's RBOC region, are referred to as Feature Group C trunks. Technically, the trunk groups were established as Feature Group trunks for the provision of Feature Group services (Feature Group A, Feature Group B, and Feature Group C) ordered out of the rural company's access tariff.

CHART 1
COMPANY A
FGC TERMINATING TRAFFIC

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,587,726	1,682,758	4,080,112	1,077,742	1,507,614	605,016	26.9800%	35.9500%
2002	5,877,825	1,759,500	3,956,574	1,021,705	1,921,251	737,795	32.6900%	41.9300%
2003	6,604,722	2,085,805	3,795,144	1,039,990	2,809,578	1,045,815	42.5400%	50.1400%
2004	7,760,104	2,391,229	4,059,805	1,106,798	3,700,299	1,284,431	47.6800%	53.7100%
2005*	9,157,047	2,631,651	4,144,692	1,130,022	4,712,355	1,501,629	51.4600%	57.0600%

*Annualized

CHART 2
COMPANY B
FGC TERMINATING TRAFFIC

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,718,675	1,657,584	4,713,652	1,289,940	1,005,023	367,644	17.57%	22.18%
2002	5,593,718	1,606,657	4,279,885	1,194,976	1,313,833	411,681	23.49%	25.62%
2003	7,012,272	1,852,954	4,725,073	1,300,679	2,287,199	552,275	32.62%	29.81%
2004	9,088,319	2,451,576	5,428,731	1,485,853	3,659,588	965,723	40.27%	39.39%
2005*	11,800,072	3,305,832	6,999,032	1,954,192	4,801,040	1,351,640	40.69%	40.89%

*Annualized

These charts underscore that Phantom Traffic is a problem that must be addressed now. For Company A, Chart 1, Column E, shows a growth in potential Phantom Traffic from 27 percent of the minutes in 2001 to 51 percent of the minutes in 2005. For Company B, the trend depicted on Chart 2, Column E, is a growth from under 18 percent of the minutes in 2001 to almost 41 percent in 2005.

Many of the parties commenting in CC Docket No. 01-92, In the Matter of Developing a Unified Intercarrier Compensation Regime, addressed Phantom Traffic as an issue needing immediate attention. For example, NECA points out: "'phantom traffic' problems must be eliminated … if any intercarrier compensation system is to survive long term. A sizable portion of traffic now terminating on ILEC switches is being delivered in a form in which the billing information is absent, lost, stripped or altered."[51] The Iowa Telecommunications Association points out that problems of Phantom Traffic are causing significant market distortions.[52] CenturyTel identifies Phantom Traffic as "one of the fastest growing problems facing the industry."[53] CenturyTel points out:

> [Phantom traffic] increases the ILECs' cost, as they are forced to invest in additional facilities to avoid network congestion affecting their legitimate customers. They incur expenses, too, in trying to determine source of this traffic so they can impose appropriate termination charges.[54]

TDS also takes the position that the Commission should address phantom traffic issues immediately.[55] TDS points out:

> The growing problem of phantom traffic distorts the intercarrier compensation system by placing undue burdens and costs on other carriers and consumers (especially rural consumers); undermines the cost-causer principle at the heart of the current intercarrier compensation system; and contributes to regulatory arbitrage.[56]

Phantom Traffic is an issue that the Commission can and must address immediately.

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[51] NECA Comments in CC Docket No. 01-92 at p. 16.
[52] Comments of the Iowa Telecommunications Association in CC Docket 01-92 at p. 3.
[53] Comments of CenturyTel, Inc. (CenturyTel Comments) in CC Docket 01-92 at p. 5.
[54] CenturyTel Comments at p. 5.
[55] Comments of TDS Telecommunications Corporation (TDS Comments) in CC Docket 01-92 at p. 9.
[56] TDS Comments at p. 10.

There is a straightforward solution that consists of four parts:

1. The Commission should adopt "truth-in-billing" standards that make it explicitly unlawful to alter, exclude, or strip carrier or call identifying information and that require population of jurisdictional information in the signaling stream.[57]

2. The Commission should implement processes for challenging suspect traffic and penalizing responsible carriers.

3. The Commission should adopt a standard that the carrier delivering inaccurately labeled traffic is responsible for termination charges for that traffic.

4. The Commission should authorize the blocking of inaccurately labeled traffic, particularly by the tandem provider, subject to specific guidelines and timelines for notifying and warning consumers and investigating and resolving disputes.

The most effective means of controlling and solving this problem is to focus at the tandem switch. The tandem is a bottleneck facility and the tandem provider wields significant market power. Most access/toll tandems are operated by RBOCs which have the economic wherewithal to address this problem if properly motivated. Requiring the transiting provider to be responsible for the payment of terminating charges if the message is not properly populated will provide an economic incentive to those tandem providers. Then, authorizing the tandem provider (and, where it is feasible, the end office provider)[58] to block improperly labeled traffic will give the tandem provider a powerful tool to bring the Phantom Traffic problem to an end.

The Joint Board can and should recommend that the Commission address Phantom Traffic immediately. The consideration of "truth-in-billing" standards should be recommended as a possible solution.

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[57] NTCA provides guidance on what type of standard might be adopted for requiring population of the jurisdictional information by recommending that the currently optional parameters of the Network Interconnection Interoptability Forum for the Jurisdictional Information Parameter (JIP) be adopted as mandatory standards. See, NTCA Comments at p. 51.

[58] If the traffic arrives on a common trunk group it may be difficult for the end office switch to block traffic without also blocking traffic with properly populated records.

2. The Contribution Base for Universal Service Can and Should be Addressed Immediately.

USTA points out that it is important that the Joint Board's activities not distract the FCC from addressing universal service contribution issues.[59] There is a growing recognition that all service providers that utilize the public switched telephone network (PSTN) should be required to contribute to the federal universal service fund. As argued by CenturyTel:

> It is the Commission's own policy that universal service should be administered in a competitively-neutral, technology-neutral manner, so distinctions between commercial mobile radio service ("CMRS") and wireline service, and between digital subscriber line ("DSL") and cable modem, should be eliminated. Internet procotol- ("IP-") enabled services and wireless services are very much dependent on the availability of a ubiquitous PSTN. For example, ILEC-provided ADSL-enabled lines (rural and non-rural) make up 36.5% of all high-speed lines, giving more than a third of the nation's high-speed broadband customers access to next-generation services via the PSTN. CMRS providers typically rely on the PSTN for backhaul between different parts of their networks. At a more fundamental level, all interconnected service providers, including CMRS carriers and cable telephony providers, benefit from their ability to deliver calls to and receive calls from PSTN customers. The only equitable, non-discriminatory and technology-neutral rule for contributions that will produce a sufficient base of support is to require *all* service providers who benefit from the ubiquity of the PSTN to begin immediately to contribute to its support.[60]

This is a basic standard that the Joint Board should immediately support. All users of the PSTN should be required to contribute to the federal universal service fund.

CenturyTel goes on to describe a proposal for using working telephone numbers as a basis for contribution to reach the goal that all users of the PSTN contribute. The Joint Board should recommend that work begin immediately on studying the use of working telephone numbers as the basis for contribution.

3. The Identical Support Rule for Competitive ETCs Should be Abandoned.

As noted above, rather than focus on arbitrarily limiting support for rural telephone companies upon competitive entry, the Joint Board should look at where the growth in the size of

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[59] USTA Comments at p. 10.
[60] CenturyTel Comments at p. 7-8.

the fund is occurring and establish the means by which to eliminate the “identical support” or “same support” rule for competitive ETCs. The concept that each ETC should receive support based upon its own costs is gaining support. It is an element of the TSP advanced by Mr. Gregg. As pointed out by FairPoint, such a change in the rule to require support be based upon each carrier’s costs correctly identifies the costs that are incurred in serving high-cost areas:

> Both wireline and wireless networks are relatively low cost in cities and towns where population concentrations are high. Similarly, both technologies become very costly on a per-customer basis in remote and sparsely populated rural areas. In the recent ETC Designation Order, the FCC has attempted to ensure that wireless ETCs commit to serve throughout the designated service [area] through the requirement to submit a five-year build-out plan. Mr. Gregg’s proposal to base support on the actual cost of the CETC would appear to be a more efficient means to accomplish this objective, and would provide additional investment incentives, as high-cost support would only be provided as high-cost areas were actually served. (Footnotes omitted.)[61]

Further, as underscored by NTCA, the FCC “has yet to establish a relationship between a CETC’s costs and the support the CETC receives. A per-line freeze on ILEC support will not address this fundamental flaw in the Commission’s rules and will only make it more difficult for rural ILECs to maintain and upgrade their networks, which will ultimately harm rural customers…. The identical support rule provides CETCs with the same per-line support regardless of their cost structure and defeats the Commission’s guiding principle of ‘competitive neutrality.’ The rule has undermined the Commission’s ability to ensure that CETC support is not excessive and used for the purposes intended.” (Footnotes omitted.)[62] These are compelling arguments for elimination of the identical support rule.

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[61] FairPoint Comments at p. 7.
[62] NTCA Comments at p. 12.

4. The Joint Board Should Consider Adoption of a Separate Wireless Fund.

A component of the USERP proposal is to create a separate wireless fund. This concept is worth further study.

Some of the Comments criticize the concept as not technologically neutral.[63] However, technological neutrality clearly does not mean that each entrant receives the same support per line as the incumbent receives. To do so masks the differences in technology and in itself creates a system that is not technologically neutral. The concept of technological neutrality should, at its core, mean that the differences between technologies are taken into account. A simple way to do that is to have two funds. One fund for wireless providers and a second for wireline providers.

The Alaska Regulatory Commission supports consideration of a wireless fund as providing more accountability.[64] CenturyTel supports the move to study of the creation of such a fund.[65] Similar comments pointing out the benefits of increased accountability of a separate fund and therefore the need to further consider the concept were filed by TDS and OPASTCO.[66]

As part of the consideration of a wireless fund, other issues surrounding wireless ETCs should be considered. These include the existing use of a billing address as a basis for locating a wireless customer. There is a lack of accountability built into the use of the billing address. There are many, many cases in which wireless customers cannot even get wireless reception at their billing address. Instead, those customers use their cellular phones for work in a more urban area. Providing support under those circumstances does nothing to develop rural infrastructure.

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[63] See, e.g., Comments of the Oregon Public Utility Commission at p. 13.
[64] Comments of the Regulatory Commission of Alaska at p. 14.
[65] CenturyTel Comments at p. 9.
[66] TDS Comments at p. 15; OPASTCO Comments at p. 17.

There is reason to believe that the CETC designation process should undergo still further review. The question is whether the FCC's standards adopted in the ETC Designation Order[67] should be adopted as national standards. It is not clear, at this date, that the states are implementing the ETC Designation Order in a way that provides accountability in the ETC designation process. These are issues that deserve a closer look.

V. CONCLUSION

The Joint Board members and staff have developed creative ways to address restructuring the federal high-cost fund. However, there are serious issues concerning each of the four proposals. Most notably, none of the proposals has provided sufficient detail about the proposal to allow a meaningful evaluation. Rather than expend precious resources trying to address the deficiencies in the proposals, the rural companies of Colorado, Montana and Washington, joined by Monroe Telephone Company of Oregon, respectfully urge the Joint Board to set aside structural reformation of the high-cost fund at the present time. Such a major overhaul of the federal universal service support program should be undertaken in conjunction with, or just after, intercarrier compensation reform is addressed.

The rural companies urge the Joint Board to recommend to the FCC that the issue of phantom traffic be addressed immediately. This is an important issue which affects both intercarrier compensation reform and universal service issues.

In addition, the rural companies urge the Joint Board to recommend to the FCC that work begin immediately on expanding the USF contribution base through a "working number" concept as the basis for contribution to the USF fund.

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[67] In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (Released March 17, 2005).

Finally, the rural companies recommend to the Joint Board that it, in turn, recommend to the FCC that the "same support" rule be abandoned and that the process to develop definitive rules related to the CETC designation process and CETC accountability for use of high-cost funds be immediately undertaken.

Respectfully submitted this 31st day of October, 2005.

By: /s/ Richard A. Finnigan
Richard A. Finnigan, WSB #6443
Attorney for the Washington
Independent Telephone Association,
Montana Telecommunications Association
and Colorado Telecommunications
Association